

REMARKS

Claims 1-28 are in the case. Claims 5-7, 10-13, and 17-28 have been canceled. Claims 1-4, 6-9, and 14-16 are under consideration.

Claims 1-4 8,9 and 14 are rejected under 35 USC § 112

Claims 15 and 16 are objected to.

Claims 1, 2, 4, 8, and 14-16 have been amended to more clearly define Applicants invention.

Applicants gratefully acknowledge the Examiner's consideration of the IDS filed 6/24/03

No new matter has been added.

Claim Objections

Claims 15 and 16 are objected to under 37 CFR 1.75(c) as being in improper multiple dependant form. The claims have been amended to overcome this objection.

Claims 2 and 4 are objected to for informalities. Specifically:

- In claim 2 "from" is misspelled
- In claim 4 there are 2 spaces between "as" and "set"

The claims have been amended to overcome these objections.

Double Patenting

Claims 1-4, 8-9 and 14 are provisionally rejected under the judicially created doctrine of obviousness-type patenting as being unpatentable over claims 1-4, 8-9 and 14 of co-pending Application USSN 10/275,191.

Applicants submit this rejection is moot in view of the abandonment of Application USSN 10/275,191. A copy of the notice of abandonment for this case accompanies this response.

Claim Rejections – 35 USC § 112, first Paragraph

Claims 1-3, 8 and 14 are rejected under 35 USC § 112, first paragraph as failing to comply with the written description requirement. Specifically, the Examiner argues that the specification lacks adequate written description for homologues of the promoter region of *yvaWXY*.

The Claims have been amended to remove the term "homologues thereof" as modifying the gene.

Claim 14 is rejected under 35 USC § 112, first paragraph as failing to comply with the enablement requirement. Specifically, the claim recites the limitation that *yvaWXY* is down regulated at T0 whereas the specification teaches that *yvaWXY* is up-regulated at T0.

The claim has been amended to include the limitation that *yvaWXY* is up-regulated at T0. Basis for this amendment is found on Page 18, starting at line 27 and page 32 lines 20-25 of the specification. In view of this amendment Applicants submit that Claim 14 complies with 35 USC § 112, first paragraph.

Claim Rejections – 35 USC § 112, second Paragraph

Claims 1-4, 8-9 and 14 are rejected under 35 USC § 112, second paragraph for indefiniteness. Specifically, Claims 1,2 and 8 are vague in the recitation of “the nucleic acid fragment comprising the promoter region of a *Bacillus* gene is *yvaWXY*” as it is unclear how a fragment comprising a promoter region can be a gene.

Applicants have amended the Claim for clarity.

In view of the foreign Applicants respectfully request reconsideration of the claims as amended and removal of all rejections.

Respectfully submitted,



S. NEIL FELTHAM
ATTORNEY FOR APPLICANTS
Registration No.: 36,506
Telephone: (302) 992-6460
Facsimile: (302) 992-5374

Dated: October 15, 2004